



## **Staff Report**

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### **RESOLUTION APPROVING CONTRACT AND APPOINTING MARC L. ZAFFERANO AS CITY ATTORNEY**

Honorable Mayor and Council Members:

#### **Summary**

The City Council has announced its decision to appoint Mr. Marc L. Zafferano as the Belmont City Attorney. A contract has been negotiated (attached) with Mr. Zafferano. Adoption of the attached resolution will authorize execution of this contract

#### **Background**

On February 22, 2005, the City Council approved a resolution appointing Marc Zafferano as the Interim City Attorney. Mr. Zafferano has served as Belmont's Interim City Attorney continuously since that time. On June 28, 2005, the City Council announced its decision to recognize Mr. Zafferano for his excellent service during the last 5 months and appoint him as the City's Attorney. A professional services contract has been negotiated and is being submitted for City Council approval.

In April, staff presented a report entitled "Additional discussion and direction regarding City Attorney services." This report provides further background on the scope of City Attorney services provided by the position.

#### **Discussion**

The basic terms of this two year contract are as follows:

- Two year contract effective July 1, 2005 expiring June 30, 2007. It is anticipated that a new contract will be negotiated at that time;
- Monthly retainer rate of \$ 8,300 per month;
- Hourly "Non-Retainer" work at the rate of \$ 175 per hour
- City contribution to retirement (PERS) on the same basis as it does for its management employees. City Attorney shall be responsible for contributing member paid portion 7%

#### **Fiscal Impact**

The legal retainer portion of this contract will cost \$ 99,600 per year. Additional hourly work at the rate of \$ 175 per hour will depending upon the number of claims filed and litigation requirements. The total FY 2005-06 budget in the City Attorney budget for these services is

\$ 257,429.

**Public Contact**

N/A

**Recommendation**

The City Manager recommends approval of the attached resolution authorizing a professional services agreement with Mr. Marc Zafferano for Attorney services as the Belmont City Attorney.

**Alternatives**

N/A

**Attachments**

- A. Resolution
- B. Professional Services Agreement

Respectfully submitted,

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Jack R. Crist  
Interim City Manager

**RESOLUTION NO. \_\_\_\_\_**

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF BELMONT  
AUTHORIZING AN AMENDMENT TO THE CONTRACT  
FOR CITY ATTORNEY SERVICES**

WHEREAS, Jean B. Savaree has resigned as City Attorney; and

WHEREAS, the City Council wishes to enter into a new contract for services and appoint Marc L. Zafferano as Belmont City Attorney, as reflected in Attachment B.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Belmont hereby authorizes and directs the City Manager to execute said contract.

\* \* \* \* \*

I hereby certify that the foregoing Resolution was duly and regularly passed and adopted by the City Council of the City of Belmont at a regular meeting thereof held on July 26, 2005 by the following vote:

AYES, COUNCILMEMBERS: \_\_\_\_\_

NOES, COUNCILMEMBERS: \_\_\_\_\_

ABSTAIN, COUNCILMEMBERS: \_\_\_\_\_

ABSENT, COUNCILMEMBERS: \_\_\_\_\_

\_\_\_\_\_  
CLERK of the City of Belmont

APPROVED:

\_\_\_\_\_  
MAYOR of the City of Belmont

AGREEMENT FOR SERVICES  
FOR CITY ATTORNEY

WHEREAS, the firm of Aaronson, Dickerson, Cohn & Lanzone has provided legal services to the City of Belmont (hereinafter “City”) for a number of years;

WHEREAS, Marc L. Zafferano of Aaronson, Dickerson, Cohn & Lanzone has served as the Interim City Attorney since February 1, 2005;

WHEREAS, the City Council of the City wishes to continue its relationship with Marc L. Zafferano to provide legal services to the City;

NOW, THEREFORE, IT IS AGREED AS FOLLOWS:

1. DESIGNATION OF CITY ATTORNEY

Marc L. Zafferano is hereby appointed City Attorney of the City of Belmont and related agencies, effective July 1, 2005. This contract supercedes any prior contracts or amendments thereto.

2. MEETING ATTENDANCE

A. The City Attorney (or his deputy when the City Attorney is unavailable) shall attend all regular meetings and special meetings, as requested by City Manager, of the City Council, Planning Commission, Belmont Fire Protection District, Belmont Redevelopment Agency, and Belmont Public Financing Authority. The City Attorney’s duties in this connection shall be to render advice and opinions with respect to all legal matters that may arise during any meetings, excepting, however, legal matters which may pertain to assessment districts, issuance of bonds, or other proceedings wherein legal services are to be provided by special counsel. The City Attorney shall maintain meeting notes of all closed session matters.

B. The City Attorney (or his deputy when the City Attorney is unavailable) shall normally attend City staff meetings, which are generally held twice a month following Council meetings.

3. PREPARATION OF DOCUMENTS

When requested to do so by the City Council or the City Manager, the City Attorney, or his representative, shall prepare staff reports, resolutions, notices, contracts, ordinances, opinions and other documents and papers necessary, or appropriate, in matters pertaining to the City, and shall examine for legal sufficiency all documents submitted to him by the City.

4. LEGAL ASSISTANCE, ENFORCEMENT AND ADVICE

The City Attorney shall cooperate with and provide legal advice to the City, its officers, agents and employees on all general legal matters pertaining to the City, including the enforcement of state and local laws and codes. The City Attorney shall also research and interpret laws, court decisions and other legal authorities in order to prepare legal opinions and to advise the City Council, City Manager and staff on legal matters pertaining to City operations.

5. LITIGATION REPORTS, LEGAL UPDATES, AND RETAINER HOURS

The City Attorney shall, on a regular basis, prepare reports to the City Council, giving the current status of any legal actions in which the City may be involved, including code enforcement. The City Attorney shall comment in the reports on any new legislation or court cases that may affect the City.

The City Attorney also shall be responsible for advising City officials on how to respond to these changes as well as drafting memorandum, guidelines, resolutions, ordinances, administrative rules or other procedures that he feels necessary for the City to comply with these changes in the law, when such drafting is requested by the City Council or City Manager.

The City Attorney also shall submit monthly reports to the City Manager of the nature and time spent on all retainer services.

6. ACQUISITION OF LAND AND EASEMENTS

The City Attorney shall provide the necessary legal services required in connection with the acquisition of land or easements up to the point that the City Council authorizes the commencement of eminent domain proceedings. The City Attorney shall also perform legal work pertaining to property acquisition, property disposal, public improvements, public rights-of-way and public utilities. The City Attorney shall, if outside counsel is retained, coordinate work of outside legal counsel as directed by the City Council and/or City Manager.

7. RELATED LEGAL SERVICES

The City Attorney also shall perform such other related legal services for the City as may be requested by the City Council or City Manager, such as review of contracts, specifications, leases, JPA agreements, MOU's and other similar documents. The City Attorney shall at all times endeavor to provide response to Council and staff inquiries concerning legal matters on a "same day" basis. The intent of this requirement is to provide City officials with an immediate initial contact on legal problems and not necessarily the final researched answers.

8. CONFERENCE ATTENDANCE

The City Attorney shall be entitled to attend meetings and conferences such as the League of California Cities sponsored activities. He shall be entitled to reimbursement for registration, meals, lodging and transportation in an amount not to exceed \$1,200 per year.

9. OUTSIDE LAW PRACTICE

The City Attorney shall be allowed to conduct an outside law practice. The City Attorney agrees to inform the City Council prior to any proposed representation of another city as a retained client, or any representation that would constitute an actual or perceived conflict.

10. LITIGATION AND OTHER DUTIES

A. The City Attorney shall represent the City in all legal proceedings, whether civil or criminal, required in the enforcement of the City's ordinances.

- B. As authorized by the City Council, the City Attorney, or his representative, shall represent the City in legal proceedings and other litigation to which the City may be a party except where a conflict of interest exists, or where the requirement of specialized legal expertise makes representation inappropriate. In such situations, the City Attorney shall spend time as necessary to brief and/or coordinate the activities of specialized counsel as their work relates to the City's interests.
- C. The City Attorney shall represent the City in regard to special projects or perform other duties as requested by the City Council or the City Manager.

11. LIMITATION OF DUTIES

- A. The City Attorney will not be required to participate in the City negotiation process with its designated employee representatives. The City Attorney may, however, advise and defend the City on personnel matters subject to litigation, normally involving hiring and promotional practices, and disciplinary actions.
- B. The City currently contracts for both the administration and legal representation for all workers' compensation claims and litigation. The City Attorney will only be required to provide advice in this area as requested by the City Council or City Manager.
- C. The City Attorney shall sit as the Redevelopment Agency counsel at the Agency's meetings which are held at the same time and place as City Council meetings. He shall provide general legal advice except in those areas requiring specialized legal expertise for Agency matters.
- D. Major litigation or litigation in a specialized area may be contracted out to an appropriate law firm specializing in the particular subject area. In such cases, the City Attorney shall consult with the Council before retaining outside counsel. The City Attorney will be responsible for general oversight and for providing general legal assistance to the other law firm as required.

12. DEPUTY CITY ATTORNEY AND STAFF MEMBER

The City Attorney has designated, for the purposes of attending City Council meetings, Gregory J. Rubens to act as Deputy City Attorney. The Deputy City Attorney shall represent the City at such meetings when the City Attorney is unable to attend, or when the City Attorney requires assistance. The City Attorney shall also designate a staff member. The staff member will be available to assist the City with routine administrative matters required in the execution of this agreement. It is the intent of this agreement that these positions will not be eligible for PERS.

13. COMPENSATION

Compensation shall be as outlined in Exhibit A. The retainer portion of compensation shall be considered full compensation for purposes of contributions and withholding with respect to retirement, social security, income tax withholding, workers compensation and the like. The retainer portion shall be included in the City's payroll and paid in the same time and manner as other employees of the City.

14. COSTS

The City Attorney shall be entitled to be reimbursed by the City for all costs advanced on his behalf such as court costs, filing fees, service of process fees, juror's fees, witness fees, investigators' fees, appraisers' fees, cost of photographs and charts in connection with litigation, and the like.

15. OVERHEAD

Except as expressly provided, the City Attorney shall pay all overhead incurred in providing City Attorney services to the City including, but not limited to rent of the law firm's office, telephone, secretarial, bookkeeping, reception, postage, stationery, office supplies, library, copying, taxes and licenses.

16. INSURANCE

City Attorney shall obtain and maintain for the duration of the Agreement and any and all amendments, insurance against claims for injuries to persons or damage to property which may arise out of or in connection with performance of the services by City Attorney or City Attorney's agents, representatives, employees or subcontractors. The insurance shall be obtained from an insurance carrier admitted and authorized to do business in the State of California. The insurance carrier is required to have a current Best's Key Rating of not less than "A-VII", or as otherwise acceptable to the City.

16.1 COVERAGES AND LIMITS. City Attorney shall maintain the types of coverages and minimum limits indicated below, unless City Manager approves a lower amount. These minimum amounts of coverage shall not constitute any limitations or cap on City Attorney's indemnification obligations under this Agreement. City, its officers, agents, volunteers and employees make no representation that the limits of the insurance specified to be carried by City Attorney pursuant to this Agreement are adequate to protect City Attorney. If City Attorney believes that any required insurance coverage is inadequate, City Attorney shall obtain such additional insurance coverage, as City Attorney deems adequate, at City Attorney's sole expense.

16.1.1 COMMERCIAL GENERAL LIABILITY INSURANCE. \$1,000,000 combined single-limit per occurrence for bodily injury, personal injury and property damage. If the submitted policies contain aggregate limits, general aggregate limits shall apply separately to the work under this Agreement or the general aggregate shall be twice the required per occurrence limit.

16.1.2 AUTOMOBILE LIABILITY. \$1,000,000 combined single-limit per accident for bodily injury and property damage.

16.1.3 WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY. Workers' Compensation limits as required by the California Labor Code and Employer's Liability limits of \$1,000,000 per accident for bodily injury or disease.

16.1.4 PROFESSIONAL LIABILITY. Errors and omissions liability appropriate to City Attorney's profession with limits of not less than \$1,000,000 per claim.

16.2 ADDITIONAL PROVISIONS. City Attorney shall ensure that the policies of insurance required under this Agreement contain, or are endorsed to contain, the following provisions:

16.2.1 For Commercial General Liability Insurance and Automobile Liability Insurance, City,

its officers, agents, volunteers and employees shall be named as additional insureds.

16.2.2 City Attorney shall obtain occurrence coverage, excluding Professional Liability, which shall be written as claims-made coverage. Insurance policies with claims-made coverage shall be maintained for a period of at least 3 years after completion of the contract.

16.2.3 This insurance shall be in force during the life of the Agreement and any extensions of it and shall not be canceled without thirty (30) days prior written notice to City.

16.3 PROVIDING CERTIFICATES OF INSURANCE AND ENDORSEMENTS. Prior to City's execution of this Agreement, City Attorney shall furnish certificates of insurance and endorsements to City.

16.4 FAILURE TO MAINTAIN COVERAGE. If City Attorney fails to maintain any of these insurance coverages, then City shall have the option to declare City Attorney in breach, or may purchase replacement insurance or pay the premiums that are due on existing policies in order to maintain the required coverages. City Attorney is responsible for any payments made by City to obtain or maintain insurance and City may collect these payments from City Attorney or deduct the amount paid from any sums due City Attorney under this Agreement.

16.5 SUBMISSION OF INSURANCE POLICIES. Concurrently with the execution of this Agreement, City Attorney shall furnish City with certificates and copies of information or declaration pages of the insurance required hereunder and, with respect to evidence of commercial general liability and automobile liability insurance coverage, original endorsements:

- (a) Precluding cancellation or reduction in coverage before the expiration of thirty (30) days after City shall have received written notification of cancellation or reduction in coverage by first class mail;
- (b) Providing that City Attorney's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability (cross liability endorsement);
- (c) Naming the City of Belmont, its Council, officers, boards, commissions, employees, volunteers and agents, as additional insureds as respects: liability arising out of work or operations performed by or on behalf of City Attorney; or automobiles owned, leased, hired or borrowed by City Attorney.
- (d) Providing that City Attorney's insurance coverage shall be primary insurance with respect to City, its Council, officers, boards, commissions, employees, and agents, and any insurance or self-insurance maintained by City for itself, its Council, officers, boards, commissions, employees, or agents shall be in excess of City Attorney's insurance and not contributory with it.
- (e) Coverage shall not extend to any indemnity coverage for the active negligence of the additional insured in any case where an agreement to indemnify the additional insured would be invalid under Subdivision (b) of Section 2782 of the Civil Code.



- (f) If General Liability and/or Errors & Omissions coverages are written on a claims-made form:
1. The “Retro Date” must be shown, and must be before the date of the contract or the beginning of contract work.
  2. Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of the contract of work.
  3. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a “Retro Date” prior to the contract effective date, City Attorney must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.
  4. A copy of the claims reporting requirements must be submitted to City for review.

16.6 PRIMARY COVERAGE. For any claims related to the services and this Agreement, the City Attorney’s insurance coverage shall be primary insurance with respect to City, its officers, agents, volunteers and employees. Any insurance or self-insurance maintained by City for itself, its officers, agents, volunteers and employees, shall be in excess of City Attorney’s insurance and not contributory with it.

16.7 REDUCTION IN COVERAGE/MATERIAL CHANGES. City Attorney shall notify City thirty (30) days prior to any reduction in any of the insurance coverage required pursuant to this Agreement or any material changes to the respective insurance policies. Any deductibles or self-insured retentions must be declared to and approved by City. At the option of City, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the City, its officers, officials, employees and volunteers; or City Attorney shall provide a financial guarantee satisfactory to City guaranteeing payment of losses and related investigations, claim administration and defense expenses.

17. INDEMNIFICATION

The City Attorney shall hold harmless, defend at its own expense, and indemnify the City against any and all liability, claims, losses, damages or expenses, including reasonable attorneys’ fees, arising from all acts or omissions to act of City Attorney or its officers, agents or employees in rendering services under this contract; excluding, however, such liability, claims, losses, damages or expenses arising from City’s sole negligence or willful acts.

18. RECORDS, MONTHLY STATEMENTS AND AUDIT

The City Attorney shall maintain careful and accurate records of all time spent by the City Attorney to the closest ¼ of an hour, and all reimbursable costs advanced by the City Attorney’s office in conjunction with City business. The City Attorney shall render monthly statements to the City for the performance of all services showing the services performed, the hours spent, the cost center served, the costs advanced and the amount the City Attorney is entitled to receive from the City for the month. If approved, the sum shown to be due by such statement shall be paid to the City Attorney by the City within thirty (30) days after said

approval. Books of account and the time records of the City Attorney pertaining to business transacted for the City shall be open to audit by the City Council, City Manager or their designee

Hard copy records related to City of Belmont legal matters shall be secured in a locked file cabinet with usual and customary procedures for maintenance of the file cabinet keys. Computer files of City of Belmont legal matters shall be secured utilizing generally accepted computer security methods for file access, retention and permanent storage.

19. EVALUATION

The City Attorney shall schedule closed sessions for his evaluation twice yearly on mutually agreed-upon dates.

20. TERMINATION

This Agreement may be terminated upon either party giving the other sixty (60) days written notice. Upon the termination of this Agreement, the City Attorney shall return to the City any City Code books received, active litigation files, and any files maintained on City matters by the City Attorney.

21. AMENDMENTS AND NONASSIGNABILITY

This Agreement may be amended only in writing and only with the written consent of both parties. This Agreement may not be transferred or assigned.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the 26<sup>th</sup> day of July, 2005.

CITY OF BELMONT

MARC L. ZAFFERANO

By: \_\_\_\_\_  
Dave Warden  
Mayor

By: \_\_\_\_\_  
Marc L. Zafferano  
City Attorney

EXHIBIT A

For the period July 1, 2005 through June 30, 2007, the monthly retainer rate shall be \$8,300.00. All non-retainer work shall be billed at the rate of \$175.00 per hour.

In addition to the retainer, the City shall contribute to PERS retirement on the same basis as it does for its management employees. City Attorney shall be responsible for contributing member paid portion of 7%.

The retainer covers those services outlined in Sections 2 through 8.